

Exhibit A

Michael K Jeanes, Clerk of Court

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Erika Hailes

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1 Thomas M. Baker - Bar # 013475

2 **BAKER & BAKER**

3 5050 N. 8th Place #10

4 Phoenix, Arizona 85014

5 (602) 279-1644

6 Attorney for Intervenors

7 **SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 PHILIP A. KENNER, TRUST BENEFICIARY,
10 THE SHANGRI-LA TRUST 1999,

11 Plaintiff,

12 vs.

13 JOHN KAISER, TRUSTEE, THE SHANGRI-
14 LA TRUST 1999; JOHN KAISER, a married
15 man; ELIZABETH KAISER, a married
16 woman; JOHN AND JANE DOES I-VII

17 Defendants.

18 JOHN KAISER, a married man as his sole and
19 separate property; BRYAN BERARD, an
20 unmarried man,

21 Counterclaimants,

22 vs.

23 PHILIP A. KENNER, a single man,

24 Counterdefendant.

25 TYSON and KATHY NASH, husband and
26 wife; DARRYL SYDOR; JERE LEHTINEN;
27 DIMITRI KHRISTICH; WILLIAM
RANFORD,

Intervenors.

NO. CV2012-055576

MOTION TO INTERVENE

(Oral Argument Requested)

(Assigned to the Honorable Alfred Fenzel)

28 Come now the Intervenors, by and through their attorney undersigned, and pursuant to Rule
29 24(a) & (b), Ariz.R.Civ.P., hereby move to intervene in this action for the reasons set forth below.

Intervenors are parties who loaned monies to Defendants pursuant to the terms and conditions set forth within their individual promissory notes. *See, Exhibits 1-5* attached hereto. These promissory notes state, in relevant part, as follows:

1. Tyson and Kathy Nash promissory note, dated 9/8/2009
2. Darryl Sydor promissory note, dated 10/5/2009
3. Jere Lehtinen promissory note, dated 11/19/2009
4. Dimitri Khristich promissory note, dated 4/ /2010
5. William Ranford promissory note, dated 5/23/2010

1. **Tyson and Kathy Nash** – “. . . the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note. . . . The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at **8224 North Golf Drive, Paradise Valley, AZ.** . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.”
2. **Darryl Sydor** – “. . . the principal sum of \$100,000.00 within 7 days of the sale of the house located at **8224 North Golf Drive, Paradise Valley, AZ.** Interest will be paid at an annual rate of 15% paid in full per the terms of the note. . . . The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.”
3. **Jere Lehtinen** – “. . . the principal sum of \$50,000.00 within 7 days of the sale of the house located at **8224 North Golf Drive, Paradise Valley, AZ.** Interest will be paid at an annual rate of 15% paid in full per the terms of the note. . . . The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.”
4. **Dimitri Khristich** – “. . . the principal sum of \$30,000.00 within 7 days of the sale of the house located at **8224 North Golf Drive, Paradise Valley, AZ.** Interest will be paid at an annual rate of 10% paid in full per the terms of the note. . . . The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and

1 interest due on the loan will be payable immediately following the repayment of the first
2 loan on the property due to the mortgage bank.”

- 3 5. **William Ranford** – “. . . the principal sum of \$100,000.00 within 7 days of the sale of
4 the house located at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid
5 at an annual rate of 15% paid in full per the terms of the note. . . . The entire outstanding
6 principal balance of this Note shall be due and payable in full within 7 days of the sale of
7 the house located at 8224 North Golf Drive, Paradise Valley, AZ. . . . This Note is
8 secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and
9 interest due on the loan will be payable immediately following the repayment of the first
10 loan on the property due to the mortgage bank.”

11 Rule 24(a), Ariz.R.Civ.P., states that a person may intervene in a pending proceeding, as a
12 **matter of right**, “. . . when the applicant claims an interest relating to the property or transaction
13 which is the subject of the action and the applicant is so situated that the disposition of the action may
14 as a practical matter impair or impede the applicant's ability to protect that interest, unless the
15 applicant's interest is adequately represented by existing parties.”

16 In this pending matter, Intervenor claim an interest relating to the property and transaction
17 which is the subject of this action. Intervenor's promissory notes were due and payable within 7 days
18 from the sale of the real property at issue in this matter. The proceeds of the sale are presently
19 impounded in a trust account by stipulation of the existing parties. Intervenor are so situated that the
20 disposition of this action may as a practical matter impair or impede their ability to protect their
21 interest since the monies presently impounded in the trust account were to be used to repay the above
22 described promissory notes. Intervenor's interests are not adequately represented by the existing
23 parties since their interests in the impounded monies are adverse to the Intervenor's interests in the
24 impounded monies. Therefore, pursuant to Rule 24(a), Ariz.R.Civ.P., Intervenor have the right to
25 intervene in this pending proceeding.

26 In the alternative, Rule 24(b), Ariz.R.Civ.P., provides for this Court to grant **permissive**
27 intervention upon a timely application “. . .when an applicant's claim or defense and the main action

1 have a question of law or fact in common.” The Intervenor’s claims involve a common question of
 2 law or fact since the existing parties are litigating over the proceeds of the sale of the real property
 3 specifically referenced within each of the Intervenor’s promissory note. This Motion to Intervene and
 4 its accompanying Complaint are being filed on an expedited basis due to a scheduled Settlement
 5 Conference among the existing parties. Intervenor’s are filing these pleadings in order to place all
 6 current parties on notice of their claims to the proceeds of the sale of real property that are currently
 7 being held in a Trust account set up by the parties to hold the proceeds of the sale until resolution of
 8 their pending litigation. These monies are more particular described within the Intervenor’s
 9 Complaint.
 10

11
 12 WHEREFORE, pursuant to Rule 24(a) and (b), Ariz.R.Civ.P., Intervenor’s move to intervene in
 13 this pending proceeding. Intervenor’s proposed Complaint is attached hereto as **Exhibit 6**.

14 RESPECTFULLY SUBMITTED this 17th day of September, 2013

15 **BAKER & BAKER**

16
 17 By 

18 Thomas M. Baker
 Attorney for Intervenor’s

19 Copies of the foregoing e-mailed and
 20 mailed this 17th day of September, 2013 to:

21 Chandler W. Travis
 22 Melissa S. Lavonier
mlavonier@travislawaz.com
 23 Travis Law Firm PLC
 10621 S. 51st Street, Ste 103
 24 Phoenix, Arizona 85044
 Attorneys for Defendants/Counterclaimants

25 Mr. Phillip Kenner
 c/o Nathaniel H. Wadsworth
wadsworth@azlegal.com
 26 Rowley Chapman & Barney, Ltd.
 63 E. Main St., Ste. 501
 27 Mesa, AZ 85201-7423

1 Mr. Phillip Kenner
2 c/o Ronald N. Richards, Esq.
3 ron@ronaldrichards.com
4 Law Offices of Ronald Richards & Associates, A.P.C.
5 PO Box 11480
6 Beverly Hills, CA 90213
7 Attorney for Plaintiff/Counterdefendant




EXHIBIT 1

AUG 28 09 00:00a

p. 1

PROMISSORY NOTE
\$100,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Tyson and Kathy Nash (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note

[a] Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] Debtors' Collateral. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

[d] Default. Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] Facsimile. Facsimile signatures are binding on both parties.

[g] Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before September 8th, 2009.

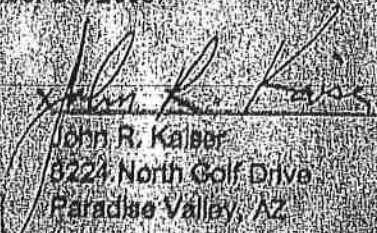

John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 2

PROMISSORY NOTE
\$100,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Darryl Sydor (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note

[a] **Due & Payable.** The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] **Choice of Law.** This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] **Debtors' Collateral.** This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

[d] **Default.** Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] **Cure.** Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] **Facsimile.** Facsimile signatures are binding on both parties.

[g] **Modifications.** Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before October 5th, 2009.

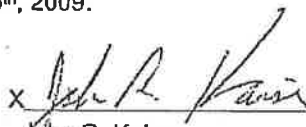
x 
John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 3

PROMISSORY NOTE
\$50,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Jere Lehtinen (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$50,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note.

[a] **Due & Payable.** The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] **Choice of Law.** This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] **Debtors' Collateral Assignment.** This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.


[d] **Default.** Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] **Cure.** Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] **Facsimile.** Facsimile signatures are binding on both parties.

[g] **Modifications.** Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before November 18, 2009.



John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 4

NOTE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), pay to the order of Dimitri Khristich (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ, at an annual rate of 10%, paid in full per the terms of the note.

[1] Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full at the time of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in full at any time without penalty or premium. Any partial payments shall be made first towards any fees or costs, then towards principal due. In the event the period of the loan extends through the annual date of this agreement, interest will accrue for the first year with principle to remain outstanding until due per the terms of the agreement.

[2] Choice of Law. This Note and the Instruments securing it are to be governed, interpreted and construed under the laws of the State of Arizona.

[3] Debtors' Collateral. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as best described. The principal and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the same bank.

[4] Default. Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] Failure to pay this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[5] Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[6] Facsimile. Facsimile signatures are binding on both parties.

[7] Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before April 1, 2013.

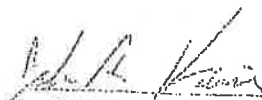
x 
John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 5

PROMISSORY NOTE
\$100,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kalser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of William Ranford (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note.

[a] Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] Debtors' Collateral Assignment. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

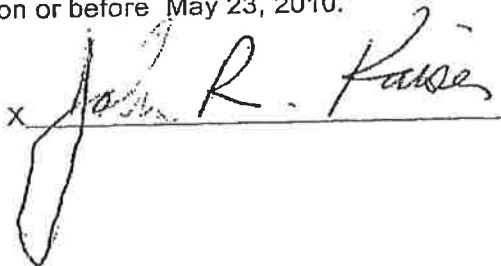
[d] Default. Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] Facsimile. Facsimile signatures are binding on both parties.

[g] Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before May 23, 2010.

x 

May 12 10 01:34p

P.2

John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 6

1 Thomas M. Baker - Bar # 013475

2 **BAKER & BAKER**

3 5050 N. 8th Place #10

4 Phoenix, Arizona 85014

5 (602) 279-1644

6 Attorney for Intervenors

7 **SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 PHILIP A. KENNER, TRUST BENEFICIARY,
10 THE SHANGRI-LA TRUST 1999,

11 Plaintiff,

12 vs.

13 JOHN KAISER, TRUSTEE, THE SHANGRI-
14 LA TRUST 1999; JOHN KAISER, a married
15 man; ELIZABETH KAISER, a married woman;
16 JOHN AND JANE DOES I-VII

17 Defendants.

18 JOHN KAISER, a married man as his sole and
19 separate property; BRYAN BERARD, an
20 unmarried man,

21 Counterclaimants,

22 vs.

23 PHILIP A. KENNER, a single man,

24 Counterdefendant.

25 TYSON and KATHY NASH, husband and wife;
26 DARRYL SYDOR; JERE LEHTINEN;
27 DIMITRI KHRISTICH; WILLIAM RANFORD,

Intervenors.

NO. CV2012-055576

INTERVENORS' COMPLAINT

(Assigned to the Honorable Alfred
Fenzel)

23 Come now the Intervenors, by and through their attorney undersigned, and for their causes of
24 action against John Kaiser, Trustee, The Shangri-La Trust 1999; John Kaiser, a married man; Elizabeth
25 Kaiser, a married woman; John and Jane Does I-VII and Bryan Berard, an unmarried man, state and
26 allege, upon information and belief, as follows:

1 Kaiser, a married woman; John and Jane Does I-VII and Bryan Berard, an unmarried man, state and
2 allege, upon information and belief, as follows:

3
4 **JURISDICTIONAL ALLEGATIONS**

5 1. Intervenor are all persons who are Payees of certain promissory notes executed by
6 John R. Kaiser, Shangri-La Trust 2002[sic (1999)] as the Maker;

7 2. These promissory notes were all signed by Defendant "John R. Kaiser, 8224 N. Golf
8 Drive, Paradise Valley, AZ".

9 3. Each of the promissory notes described below has a Choice of Law provision that states
10 "This Note and the instruments securing it are to be governed, interpreted and construed by, through
11 and under the laws of the State of Arizona". The events giving rise to the Intervenor's causes of action
12 occurred in Maricopa County, Arizona.

13 4. At all times relevant to the events set forth herein, Intervenor Tyson and Kathy Nash
14 are residents of the State of Arizona, County of Maricopa. Intervenor Darryl Sydor, Jere Lehtinen,
15 Dimitri Khristich, and William Randford are not residents of the State of Arizona.

16 5. Upon information and belief, Defendant John R. Kaiser is believed to be a resident of
17 the State of New York; Defendant Elizabeth Kaiser is believed to be a resident of the State of New
18 York; and, Counterclaimant Bryan Berard is believed to be either a resident of the State of New York
19 or Massachusetts.

20 6. Upon information and belief, Defendant Kaiser was married at the time the debt alleged
21 herein was incurred, remains married currently, and the debt was incurred to the benefit of the marital
22 community. Intervenor allege that Defendants Kaiser and the marital community of Defendants are
23 liable for the debt alleged herein.
24
25
26
27

7. At all times relevant herein, on information and belief, Kaiser is and was the sole trustee of the Shangri-La Trust 1999 (the "Trust"), a revocable trust that was formed under the laws of the state of Arizona.

8. Upon information and belief, Counterclaimant Bryan Berard was a single man at all times relevant to the events set forth herein.

9. Defendants John Does 1-10 and Jane Does 1-10 are fictitious persons whose true identities and liability to the Plaintiff are presently unknown at this time. Plaintiff hereby seeks leave to amend this complaint to include the true name and basis for liability of these fictitious persons once their identities and factual basis for their liability become known to the Plaintiff.

10. This Court has jurisdiction over this matter pursuant to Article VI, Section 14, of the Constitution of the State of Arizona, and A.R.S. §§ 12-123, 12-401, 44-1004 and Rule 24, Ariz.R.Civ.P.

GENERAL ALLEGATIONS

11. The Intervenor each have a promissory note executed by John R. Kaiser, Shangri-Las Trust 2002 [sic (1999)], (“Maker”) described as follows:

1. Tyson and Kathy Nash promissory note, dated 9/8/2009
2. Darryl Sydor promissory note, dated 10/5/2009
3. Jere Lehtinen promissory note, dated 11/19/2009
4. Dimitri Khristich promissory note, dated 4/ /2010
5. William Ranford promissory note, dated 5/23/2010

Promissory Notes attached hereto as *Exhibits 1-5*.

12. Each of the above described promissory notes require that “within 7 days of the sale of the house located at 8224 N. Golf Drive, Paradise Valley, Az.”; that “the note is secured by 8224 N. Golf Drive, Paradise Valley, Az”; and that, “the principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.”

1 13. The relevant language in the Tyson and Kathy Nash promissory Note states:

2 “... the principal sum of **\$100,000.00** within 7 days of the sale of the house
3 located at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at an
4 annual rate of **15%** paid in full per the terms of the note. . . . The entire
5 outstanding principal balance of this Note shall be due and payable in full within 7
6 days of the sale of the house located at **8224 North Golf Drive, Paradise Valley,**
7 **AZ**. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as
8 described. The principle and interest due on the loan will be payable immediately
9 following the repayment of the first loan on the property due to the mortgage
10 bank.”

11 14. The relevant language in the Darryl Sydor promissory Note states:

12 “... the principal sum of **\$100,000.00** within 7 days of the sale of the house
13 located at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at
14 an annual rate of **15%** paid in full per the terms of the note. . . . The entire
15 outstanding principal balance of this Note shall be due and payable in full within 7
16 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
17 AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as
18 described. The principle and interest due on the loan will be payable immediately
19 following the repayment of the first loan on the property due to the mortgage
20 bank.”

21 15. The relevant language in the Jere Lehtinen promissory Note states:

22 “... the principal sum of **\$50,000.00** within 7 days of the sale of the house located
23 at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at an
24 annual rate of **15%** paid in full per the terms of the note. . . . The entire
25 outstanding principal balance of this Note shall be due and payable in full within 7
26 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
27 AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as
28 described. The principle and interest due on the loan will be payable immediately
29 following the repayment of the first loan on the property due to the mortgage
30 bank.”

31 16. The relevant language in the Dimitri Khristich promissory Note states:

32 “... the principal sum of **\$30,000.00** within 7 days of the sale of the house located
33 at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at an
34 annual rate of **10%** paid in full per the terms of the note. . . . The entire
35 outstanding principal balance of this Note shall be due and payable in full within 7
36 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
37 AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as

1 described. The principle and interest due on the loan will be payable immediately
2 following the repayment of the first loan on the property due to the mortgage
3 bank.”

4 17. The relevant language in the William Ranford promissory Note states:

5 “. . . the principal sum of \$100,000.00 within 7 days of the sale of the house
6 located at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at
7 an annual rate of **15%** paid in full per the terms of the note. . . . The entire
8 outstanding principal balance of this Note shall be due and payable in full within 7
9 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
10 AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as
11 described. The principle and interest due on the loan will be payable immediately
12 following the repayment of the first loan on the property due to the mortgage
13 bank.”

14 18. Upon information and belief, the real property located at 8224 North Golf Drive,
15 Paradise Valley, Az., was sold more than 7 days ago.

16 19. None of the above described promissory notes have been paid following the sale of the
17 real property located at 8224 North Golf Drive, Paradise Valley, AZ, as required by the terms of each
18 promissory note.

19 20. Upon information and belief, the proceeds from the sale of the house from which the
20 above described promissory notes are to be paid are presently being held in a trust account with the
21 National Bank of Arizona, entitled “Berard, Kaiser and Kenner Trust Account”. The account number
22 is believed to be 0340013916.

23 21. Upon information and belief, the existing parties in this matter stipulated to place the
24 above described proceeds from the sale of the real property into the above described trust account
25 pending resolution of their current litigation in this matter.

26 22. Intervenors are entitled to priority payment of their promissory notes, including their
27 principle and all accrued interest, plus their costs and attorney’s fees, for having to bring this
complaint to intervene.

COUNT ONE
(Breach of Contract)

23. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

24. Each of the Intervenor has a valid and enforceable written promissory note signed by Defendant John R. Kaiser on behalf of John R. Kaiser, Shangri-La Trust 2002 [sic (1999)] ("the Maker").

25. The terms of each promissory note required its payment in full, plus accrued interest, within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ.

26. Defendants Kaiser and the Shangri-La Trust 2002 [sic (1999)] are in breach and default of the terms of each of the Intervenor's promissory notes.

27. Intervenor (Payees) served, by certified mail, a Notice of Default to Defendants Kaiser, Defendants Kaisers' attorney of record, Counterclaimant Berard and Plaintiff/Counterdefendant Kenner.

28. To date, these promissory notes remain in default and have not been paid. Intervenor are entitled to payment of their notes, plus all accrued interest, plus their costs and attorneys' fees pursuant to A.R.S. §§ 12-341 and 341.01, from the monies presently impounded in trust as set forth above.

COUNT TWO
(Fraudulent Transfer)

29. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

30. Unknown to the Intervenor, upon information and belief, on or about March 9, 2012 Defendant Kaiser, as trustee of the Shangri-La Trust 1999 purportedly transferred title to the real party at issue to himself and Counterclaimant Bryan Berard.

31. This transfer and/or sale of the real property at issue, was concealed from the Intervenor and the promissory notes were not paid in full within 7 days of this transfer/sale.

32. Each and every Intervener is a “creditor” and a “person who has a claim” within the meaning of A.R.S. § 44-1001(3).

33. The Intervenor's promissory notes are a "debt" and/or "liability on a claim" within the meaning of A.R.S. § 44-1001(4).

34. Defendants Kaiser, Counterclaimant Berard and the Shangri-La Trust 1999 are the “debtor” and “person(s) liable on the claim” within the meaning of A.R.S. § 44-1001(5).

35. Defendant John R. Kaiser, as trustee of the Shangri-La Trust 1999 caused a “transfer” within the meaning of A.R.S. § 44-1001(9), of the Property from the Trust to Counterclaimant Bryan Berard and Defendant John R. Kaiser, which transfer is a fraudulent transfer pursuant to A.R.S. § 44-1004.

36. As a result of the above, the Intervenor has been substantially and materially harmed unless their promissory notes, including principle and accrued interest, are paid from the monies impounded from the sale of the property.

37. Intervenor is entitled to an avoidance of the Kaiser/Berard transfer unless their promissory notes, including principle and accrued interest, are paid from the monies impounded from the sale of the property.

COUNT THREE
(Reformation)

38. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

39. Each of the Intervenor's promissory notes mistakenly refer to "Shangri-La Trust 2002".

40. Upon information and belief, there is not, nor has there ever been, a “Shangri-La Trust 2002”.

41. Upon information and belief, this was a typographical error in the description of the Trust, which should have read "Shangri-La Trust 1999".

42. Upon information and belief, this was a mutual mistake between the Maker and the Payee(s).

43. In the alternative, Intervenor's allege that the Maker's conduct in describing trust as the "Shangri-La Trust 2002", rather than the "Shangri-La Trust 1999" was fraudulent, or his conduct was inequitable, in order to unjustly enrich himself and/or induce the Intervenor's to loan monies on the terms and conditions set forth within each promissory note.

44. Intervenor is entitled to the equitable relief of reformation on the grounds that the description of the Trust is a mutual mistake or based upon the fraudulent or inequitable conduct infecting the underlying negotiations which caused the written promissory notes to deviate from the parties' true intent.

COUNT FOUR
(Breach of the Covenant of Good Faith and Fair Dealing)

45. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

46. In every contract there exists an implied warranty of good faith and fair dealing that requires that no party to a contract prevent any other party from receiving the benefits of their agreement.

47. The promissory notes described above each constitute an enforceable contract providing certain rights and obligations to each party hereto.

48. The Defendants and/or Counterclaimants breached their duty of good faith and fair dealing by their actions discussed above, and including, among other things, purportedly transferring the real property at issue from the Shangri-La Trust 1999 to Defendants/Counterclaimants Kaiser and Berard, and by not paying the promissory notes within seven (7) days of the sale of the real property at issue.

49. Intervenor has been substantially and materially harmed by such breaches in an amount to be proved and determined at trial (principal, plus accrued interest, plus costs and attorneys' fees).

50. Defendants' and/or Counterclaimants' breach of the implied warranty of good faith and fair dealing also entitled Intervenor Kenner to recover their costs and attorneys' fees pursuant to A.R.S. §§ 12-341 and 12-341.01(A).

1 WHEREFORE, Intervenor's pray for judgment against the Defendants/Counterclaimants, and
2 each of them, as follows:

- 3
- 4 A. For compensatory damages in such amount as the court or jury may determine at the time
of trial, but not less than the amounts of their promissory notes, plus their accrued interest;
- 5 B. To reform the promissory notes to state "Shangri-La Trust 1999", in place and stead of
"Shangri-La Trust 2002";
- 6 C. For consequential damages in such an amount as the Court or jury may determine at the
time of trial;
- 7 D. For general damages in such an amount as the Court or jury may determine at the time of
trial;
- 8 E. For Intervenor's costs and attorneys' fees incurred herein pursuant to A.R.S. §§ 12-341 and
12-341.01(A); and
- 9 F. For any such further relief the Court or jury finds just and proper.
- 10

11

12 DATED this 17th day of September, 2013.

13 **BAKER & BAKER**

14

15 By 

16 Thomas M. Baker
17 Attorney for Intervenor's

18

19 Copies of the foregoing e-mailed and
mailed this 17th day of September, 2013 to:

20 Chandler W. Travis
21 Melissa S. Lavonier
mlavonier@travislawaz.com
Travis Law Firm PLC
22 10621 S. 51st Street, Ste 103
Phoenix, Arizona 85044
23 Attorneys for Defendants/Counterclaimants

24 Mr. Phillip Kenner
c/o Nathaniel H. Wadsworth
25 wadsworth@azlegal.com
Rowley Chapman & Barney, Ltd.
26 63 E. Main St., Ste. 501
Mesa, AZ 85201-7423

27

1 Mr. Phillip Kenner
2 c/o Ronald N. Richards, Esq.
3 ron@ronaldrichards.com
4 Law Offices of Ronald Richards & Associates, A.P.C.
5 PO Box 11480
6 Beverly Hills, CA 90213
7 Attorney for Plaintiff/Counterdefendant

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EXHIBIT 1

AUG 28 09 00:33a

p. 1

PROMISSORY NOTE
\$100,000.00 (US)

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Tyson and Kathy Nash (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note

(a) Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

(b) Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

(c) Debtors' Collateral. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

(d) Default. Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

(e) Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

(f) Facsimile. Facsimile signatures are binding on both parties.

(g) Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before September 8th, 2009.

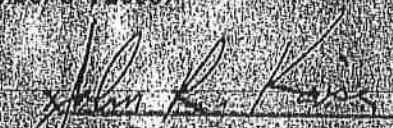

John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 2

PROMISSORY NOTE
\$100,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Darryl Sydor (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note

[a] Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] Debtors' Collateral. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

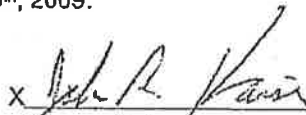
[d] Default. Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] Facsimile. Facsimile signatures are binding on both parties.

[g] Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before October 5th, 2009.

x 

John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 3

PROMISSORY NOTE
\$50,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Jere Lehtinen (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$50,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note.

[a] **Due & Payable.** The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] **Choice of Law.** This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] **Debtors' Collateral Assignment.** This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

[d] **Default.** Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] **Cure.** Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] **Facsimile.** Facsimile signatures are binding on both parties.

[g] **Modifications.** Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before November 19, 2009.

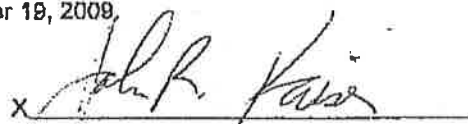
x 
 John R. Kaiser
 8224 North Golf Drive
 Paradise Valley, AZ

EXHIBIT 4

NOTE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), pay to the order of Dimitri Khristich (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the sum of \$10,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ, at an annual rate of 10%, paid in full per the terms of the note.

(b) Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full at the time of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in full at any time without penalty or premium. Any partial payments shall be made first towards any fees costs, then towards principal due. In the event the period of the loan extends through the annual date of this agreement, interest will accrue for the first year with principle to remain outstanding until due per the terms of the agreement.

(c) Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed under the laws of the State of Arizona.

(d) Debtors' Collateral. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principal and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the bank.

(e) Default. Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] Failure to pay this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

(f) Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

(g) Facsimile. Facsimile signatures are binding on both parties.

(h) Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before April

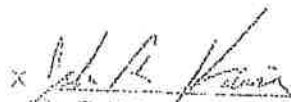
X 
John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 5

PROMISSORY NOTE
\$100,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of William Ranford (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note.

[a] Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] Debtors' Collateral Assignment. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

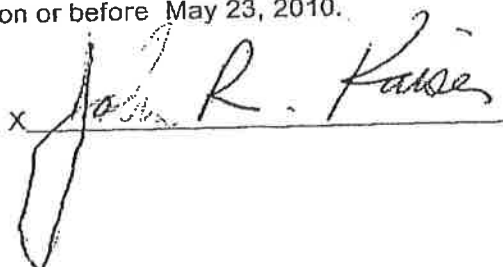
[d] Default. Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] Facsimile. Facsimile signatures are binding on both parties.

[g] Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before May 23, 2010.

x  John R. Kaiser

John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

1 Thomas M. Baker - Bar # 013475

2 **BAKER & BAKER**

3 5050 N. 8th Place #10

4 Phoenix, Arizona 85014

(602) 279-1644

5 Attorney for Intervenor

6 **SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF MARICOPA**

8 PHILIP A. KENNER, TRUST BENEFICIARY,
9 THE SHANGRI-LA TRUST 1999,

10 Plaintiff,

11 vs.

12 JOHN KAISER, TRUSTEE, THE SHANGRI-
13 LA TRUST 1999; JOHN KAISER, a married
14 man; ELIZABETH KAISER, a married woman;
15 JOHN AND JANE DOES I-VII

16 Defendants.

17 JOHN KAISER, a married man as his sole and
18 separate property; BRYAN BERARD, an
19 unmarried man,

20 Counterclaimants,

21 vs.

22 PHILIP A. KENNER, a single man,

23 Counterdefendant.

24 TYSON and KATHY NASH, husband and wife;
25 DARRYL SYDOR; JERE LEHTINEN;
26 DIMITRI KHRISTICH; WILLIAM RANFORD,

27 Intervenor.

NO. CV2012-055576

**INTERVENORS' FIRST
AMENDED COMPLAINT**

(Assigned to the
Honorable Alfred Fenzel)

28 Come now the Intervenor, by and through their attorney undersigned, and for their causes of
29 action against John Kaiser, Trustee, The Shangri-La Trust 1999; John Kaiser, a married man; Elizabeth
30 Kaiser, a married woman; John and Jane Does I-VII and Bryan Berard, an unmarried man, state and
31 allege, upon information and belief, as follows:

JURISDICTIONAL ALLEGATIONS

1
2 1. Intervenors are all persons who are Payees of certain promissory notes executed by
3 John R. Kaiser, Shangri-La Trust 2002[sic (1999)] as the Maker;

4
5 2. These promissory notes were all signed by Defendant "John R. Kaiser, 8224 N. Golf
6 Drive, Paradise Valley, AZ".

7 3. Each of the promissory notes described below has a Choice of Law provision that states
8 "This Note and the instruments securing it are to be governed, interpreted and construed by, through
9 and under the laws of the State of Arizona". The events giving rise to the Intervenors' causes of action
10 occurred in Maricopa County, Arizona.

11
12 4. At all times relevant to the events set forth herein, Intervenors Tyson and Kathy Nash
13 are residents of the State of Arizona, County of Maricopa. Intervenors Darryl Sydor, Jere Lehtinen,
14 Dimitri Khristich, and William Randford are not residents of the State of Arizona.

15 5. Upon information and belief, Defendant John R. Kaiser is believed to be a resident of
16 the State of New York; Defendant Elizabeth Kaiser is believed to be a resident of the State of New
17 York; and, Counterclaimant Bryan Berard is believed to be either a resident of the State of New York
18 or Massachusetts.

19
20 6. Upon information and belief, Defendant Kaiser was married at the time the debt alleged
21 herein was incurred, remains married currently, and the debt was incurred to the benefit of the marital
22 community. Intervenors allege that Defendants Kaiser and the marital community of Defendants are
23 liable for the debt alleged herein.

24
25 7. At all times relevant herein, on information and belief, Kaiser is and was the sole
26 trustee of the Shangri-La Trust 1999 (the "Trust"), a revocable trust that was formed under the laws of
27 the state of Arizona.

1 8. Upon information and belief, Counterclaimant Bryan Berard was a single man at all
2 times relevant to the events set forth herein.

3 9. Defendants John Does 1-10 and Jane Does 1-10 are fictitious persons whose true
4 identities and liability to the Plaintiff are presently unknown at this time. Plaintiff hereby seeks leave
5 to amend this complaint to include the true name and basis for liability of these fictitious persons once
6 their identities and factual basis for their liability become known to the Plaintiff.
7

8 10. This Court has jurisdiction over this matter pursuant to Article VI, Section 14, of the
9 Constitution of the State of Arizona, and A.R.S. §§ 12-123, 12-401, 44-1004 and Rule 24,
10 Ariz.R.Civ.P.
11

12 **GENERAL ALLEGATIONS**

13 11. The Intervenor each have a promissory note executed by John R. Kaiser, Shangri-Las
14 Trust 2002 [sic (1999)], ("Maker") described as follows:

- 15 1. Tyson and Kathy Nash promissory note, dated 9/8/2009
16 2. Darryl Sydor promissory note, dated 10/5/2009
17 3. Jere Lehtinen promissory note, dated 11/19/2009
18 4. Dimitri Khristich promissory note, dated 4/ /2010
19 5. William Ranford promissory note, dated 5/23/2010

20 Promissory Notes attached hereto as *Exhibits 1-5*.

21 12. Each of the above described promissory notes require that "within 7 days of the sale of
22 the house located at 8224 N. Golf Drive, Paradise Valley, Az."; that "the note is secured by 8224 N.
23 Golf Drive, Paradise Valley, Az"; and that, "the principle and interest due on the loan will be payable
24 immediately following the repayment of the first loan on the property due to the mortgage bank."

25 13. The relevant language in the Tyson and Kathy Nash promissory Note states:

26 "... the principal sum of \$100,000.00 within 7 days of the sale of the house
27 located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an
annual rate of 15% paid in full per the terms of the note. . . . The entire
outstanding principal balance of this Note shall be due and payable in full within 7
days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as

1 described. The principle and interest due on the loan will be payable immediately
2 following the repayment of the first loan on the property due to the mortgage
3 bank."

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11 14. The relevant language in the Darryl Sydor promissory Note states:

12 "... the principal sum of \$100,000.00 within 7 days of the sale of the house
13 located at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at
14 an annual rate of 15% paid in full per the terms of the note. . . . The entire
15 outstanding principal balance of this Note shall be due and payable in full within 7
16 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
17 AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as
18 described. The principle and interest due on the loan will be payable immediately
19 following the repayment of the first loan on the property due to the mortgage
20 bank."

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27 15. The relevant language in the Jere Lehtinen promissory Note states:

12 "... the principal sum of \$50,000.00 within 7 days of the sale of the house located
13 at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at an
14 annual rate of 15% paid in full per the terms of the note. . . . The entire
15 outstanding principal balance of this Note shall be due and payable in full within 7
16 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
17 AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as
18 described. The principle and interest due on the loan will be payable immediately
19 following the repayment of the first loan on the property due to the mortgage
20 bank."

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27 16. The relevant language in the Dimitri Khristich promissory Note states:

12 "... the principal sum of \$30,000.00 within 7 days of the sale of the house located
13 at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at an
14 annual rate of 10% paid in full per the terms of the note. . . . The entire
15 outstanding principal balance of this Note shall be due and payable in full within 7
16 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
17 AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as
18 described. The principle and interest due on the loan will be payable immediately
19 following the repayment of the first loan on the property due to the mortgage
20 bank."

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27 17. The relevant language in the William Ranford promissory Note states:

12 "... the principal sum of \$100,000.00 within 7 days of the sale of the house
13 located at **8224 North Golf Drive, Paradise Valley, AZ**. Interest will be paid at
14 an annual rate of 15% paid in full per the terms of the note. . . . The entire

1 outstanding principal balance of this Note shall be due and payable in full within 7
2 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley,
3 AZ. . . . This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as
4 described. The principle and interest due on the loan will be payable immediately
following the repayment of the first loan on the property due to the mortgage
bank.”

5 18. Upon information and belief, the real property located at 8224 North Golf Drive,
6 Paradise Valley, Az., was sold more than 7 days ago.

7 19. None of the above described promissory notes have been paid following the sale of the
8 real property located at 8224 North Golf Drive, Paradise Valley, AZ, as required by the terms of each
9 promissory note.

10 20. Upon information and belief, the proceeds from the sale of the house from which the
11 above described promissory notes are to be paid are presently being held in a trust account with the
12 National Bank of Arizona, entitled “Berard, Kaiser and Kenner Trust Account”. The account number
13 is believed to be 0340013916.

14 21. Upon information and belief, the existing parties in this matter stipulated to place the
15 above described proceeds from the sale of the real property into the above described trust account
16 pending resolution of their current litigation in this matter.

17 22. Intervenorors are entitled to priority payment of their promissory notes, including their
18 principle and all accrued interest, plus their costs and attorney’s fees, for having to bring this
19 complaint to intervene.

20 **COUNT ONE**
21 **(Breach of Contract)**

22 23. Intervenorors hereby re-allege and incorporate by reference each and every other paragraph
23 in this complaint as if fully restated herein.

24 24. Each of the Intervenorors has a valid and enforceable written promissory note signed by
25 Defendant John R. Kaiser on behalf of John R. Kaiser, Shangri-La Trust 2002 [sic (1999)] (“the
26 Maker”).

27 25. The terms of each promissory note required its payment in full, plus accrued interest,
within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ.

26. Defendants Kaiser and the Shangri-La Trust 2002 [sic (1999)] are in breach and default of the terms of each of the Intervenor's promissory notes.

27. Intervenor (Payees) served, by certified mail, a Notice of Default to Defendants Kaiser, Defendants Kaisers' attorney of record, Counterclaimant Berard and Plaintiff/Counterdefendant Kenner.

28. To date, these promissory notes remain in default and have not been paid. Intervenor
are entitled to payment of their notes, plus all accrued interest, plus their costs and attorneys' fees
pursuant to A.R.S. §§ 12-341 and 341.01, from the monies presently impounded in trust as set forth
above.

COUNT TWO

(Breach of the Covenant of Good Faith and Fair Dealing)

29. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

30. In every contract there exists an implied warranty of good faith and fair dealing that requires that no party to a contract prevent any other party from receiving the benefits of their agreement.

31. The promissory notes described above each constitute an enforceable contract providing certain rights and obligations to each party hereto.

32. The Defendants and/or Counterclaimants breached their duty of good faith and fair dealing by their actions discussed above, and including, among other things, purportedly transferring the real property at issue from the Shangri-La Trust 1999 to Defendants/Counterclaimants Kaiser and Berard, and by not paying the promissory notes within seven (7) days of the sale of the real property at issue.

33. Intervenor's have been substantially and materially harmed by such breaches in an amount to be proved and determined at trial (principal, plus accrued interest, plus costs and attorneys' fees).

1 34. Defendants' and/or Counterclaimants' breach of the implied warranty of good faith and
2 fair dealing also entitled Intervenor Kenner to recover their costs and attorneys' fees pursuant to
3 A.R.S. §§ 12-341 and 12-341:01(A).

4 **COUNT THREE**
5 **(Reformation)**

6 35. Intervenor hereby re-allege and incorporate by reference each and every other paragraph
7 in this complaint as if fully restated herein.

8 36. Each of the Intervenor's promissory notes mistakenly refer to "Shangri-La Trust 2002".

9 37. Upon information and belief there is not, nor has there ever been, a "Shangri-La Trust
10 2002".

11 38. Upon information and belief this was a typographical error in the description of the Trust,
12 which should have read "Shangri-La Trust 1999".

13 39. Upon information and belief this was a mutual mistake between the Maker and the
14 Payee(s).

15 40. In the alternative, Intervenor alleges that the Maker's conduct in describing trust as the
16 "Shangri-La Trust 2002", rather than the "Shangri-La Trust 1999" was fraudulent, or his conduct was
17 inequitable, in order to unjustly enrich himself and/or induce the Intervenor to loan monies on the terms
18 and conditions set forth within each promissory note.

19 41. Intervenor is entitled to the equitable relief of reformation on the grounds that the
20 description of the Trust is a mutual mistake or based upon the fraudulent or inequitable conduct
21 infecting the underlying negotiations which caused the written promissory notes to deviate from the
22 parties' true intent.

23 In the event Defendant Kaiser should deny entering into the written loan agreements set forth
24 above in paragraphs 11-17 (exhibits 1-5), Intervenor hereby allege, in the alternative, the following
25 counts 4-6.
26
27

COUNT FOUR
(Unjust Enrichment)

42. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

43. Intervenor loaned the Defendants and/or Counterclaimants the \$380,000.00 set forth above in paragraphs 11-17.

44. These monies were to be used by the Defendants and/or Counterclaimants for improvements/remodeling/maintenance on a real property located at 8224 North Golf Drive, Paradise Valley, Arizona.

45. The monies were to be repaid in full, plus accrued interest at the various rates set forth within paragraphs 11-17, within seven (7) days of the sale of the real property located at 8224 North Golf Drive, Paradise Valley, Arizona.

46. Defendants and/or Counterclaimants used these monies for improvements/remodeling/maintenance on a real property located at 8224 North Golf Drive, Paradise Valley, Arizona in order to increase the value of the real property.

47. By receiving these monies and not repaying the Intervenor within seven (7) days of the sale of the real property, Defendants and/or Counterclaimants have been unjustly enriched.

48. In the event that the trier of fact determines the Intervenor do not have valid written agreements with the Defendants and/or Counterclaimants, then the Defendants and/or Counterclaimants have been unjustly enriched and equity and good conscience now require the Defendants and/or Counterclaimants to repay the Intervenor their monies plus accrued interest.

COUNT FIVE
(Implied Contract)

49. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

50. Intervenor loaned the Defendants and/or Counterclaimants the \$380,000.00 set forth above in paragraphs 11-17.

52. The monies were to be repaid in full, plus accrued interest at the various rates set forth within paragraphs 11-17, within seven (7) days of the sale of the real property located at 8224-North Golf Drive, Paradise Valley, Arizona.

53. Defendants and/or Counterclaimants used these monies for improvements/remodeling/maintenance on a real property located at 8224 North Golf Drive, Paradise Valley, Arizona in order to increase the value of the real property.

54. In the event that the trier of fact determines the Intervenor do not have valid written agreements with the Defendants and/or Counterclaimants, then the Intervenor affirmatively allege that they have an implied contract on the same terms and conditions as set forth above in paragraphs 11-17 for the repayment of their monies loaned to the Defendants and/or Counterclaimants.

COUNT SIX
(Promissory Estoppel)

COUNT SIX
(Promissory Estoppel)

55. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

56. Intervenor's loaned the Defendants and/or Counterclaimants the \$380,000.00 set forth above in *paragraphs 11-17*.

57. These monies were to be used by the Defendants and/or Counterclaimants for improvements/remodeling/maintenance on a real property located at 8224 North Golf Drive, Paradise Valley, Arizona.

58. The monies were to be repaid in full, plus accrued interest at the various rates set forth within paragraphs 11-17, within seven (7) days of the sale of the real property located at 8224 North Golf Drive, Paradise Valley, Arizona.

1 66. Defendants and/or Counterclaimants used these monies for
2 improvements/remodeling/maintenance on a real property located at 8224 North Golf Drive, Paradise
3 Valley, Arizona in order to increase the value of the real property.

4 67. Defendants and/or Counterclaimants and/or their agent enticed the Intervenor to loan
5 the Defendants and/or Counterclaimants the monies described above in paragraphs 11-17 and
6 promised the Intervenor that their monies would be repaid on the terms and conditions set forth
7 above within paragraphs 11-17 by affirmatively leading the Intervenor to believe that Defendant John
8 R. Kaiser was the Trustee of the Shangri-La Trust 2002 [sic 1999] and that he had the authority to
9 encumber the property located at 8224 North Golf Drive, Paradise Valley, AZ.

10 68. Defendants and/or Counterclaimants and/or their agent affirmatively lead the Intervenor
11 to believe that Defendant John R. Kaiser was the Trustee of the Shangri-La Trust 2002 [sic 1999] and
12 was executing each of the promissory notes described above in paragraphs 11-17 (Exhibits 1-5) in his
13 official capacity as Trustee.

14 69. None of the Intervenor would have agreed to lend the Defendants and/or
15 Counterclaimants the monies described within exhibits 1-5, and on the terms and conditions contained
16 within exhibit 1-5, without having been lead to believe that Defendant John R. Kaiser was using their
17 monies for the purposes of improvements/remodeling/maintenance on a real property located at 8224
18 North Golf Drive, Paradise Valley, Arizona and that they would be repaid from the proceeds of the
19 sale of the real property within 7 days of its sale.

20 70. In the event that the trier of fact determines the Intervenor do not have valid written
21 agreements with the Shangri-La Trust 2002 [sic1999], then they affirmatively alleged that they were
22 fraudulently induced onto lending the Trust monies and equity requires the
23 Defendants/Counterclaimants to repay the Intervenor their monies loaned, plus accrued interest, from
24 the sale proceeds of the real property located at 8224 North Golf Drive, Paradise Valley, AZ.

25 71. Defendants and/or Counterclaimants, then the Intervenor affirmatively allege that the
26 equitable principles of fraudulent inducement, promissory estoppel, unjust enrichment and implied
27

1 contract all require the Defendants and/or Counterclaimants to repay the Intervenor's monies
2 loaned on the same terms and conditions as set forth above in paragraphs 11-17.

3
4 **COUNT EIGHT**
(Fraudulent Transfer)

5 72. Intervenor's hereby re-allege and incorporate by reference each and every other paragraph
6 in this complaint as if fully restated herein.

7 73. Unknown to the Intervenor's, upon information and belief, on or about March 9, 2012
8 Defendant Kaiser, as trustee of the Shangri-La Trust 1999 purportedly transferred title to the real party
9 at issue to himself and Counterclaimant Bryan Berard.

10 74. This transfer and/or sale of the real property at issue, was concealed from the Intervenor's
11 and the promissory notes were not paid in full within 7 days of this transfer/sale.

12 75. Each and every Intervenor is a "creditor" and a "person who has a claim" within the
13 meaning of A.R.S. § 44-1001(3).

14 76. The Intervenor's promissory notes are a "debt" and/or "liability on a claim" within the
15 meaning of A.R.S. § 44-1001(4).

16 77. Defendants Kaiser, Counterclaimant Berard and the Shangri-La Trust 1999 are the
17 "debtor" and "person(s) liable on the claim" within the meaning of A.R.S. § 44-1001(5).

18 78. Defendant John R. Kaiser, as trustee of the Shangri-La Trust 1999 caused a "transfer"
19 within the meaning of A.R.S. § 44-1001(9), of the Property from the Trust to Counterclaimant Bryan
20 Berard and Defendant John R. Kaiser, which transfer is a fraudulent transfer pursuant to A.R.S. § 44-
21 1004.

22 79. As a result of the above, the Intervenor's have been substantially and materially harmed
23 unless their promissory notes, including principle and accrued interest, are paid from the monies
24 impounded from the sale of the property.

25 80. Intervenor's are entitled to an avoidance of the Kaiser/Berard transfer unless their
26 promissory notes, including principle and accrued interest, are paid from the monies impounded from
27 the sale of the property.

COUNT EIGHT
(Injunctive Relief)

81. Intervenor hereby re-allege and incorporate by reference each and every other paragraph in this complaint as if fully restated herein.

82. Intervenor is entitled to enjoin the Plaintiff, Defendants and Counterclaimants from disbursing the monies presently being held in the trust account more fully described above in paragraph 20.

83. Intervenor has plead to a substantial degree of certainty that the monies presently being held in the trust account described above in paragraph 20 was to be used to repay the Intervenor the principle amount each Intervenor loaned to the Defendants and/or Counterclaimants, plus all accrued interest as set forth above within paragraphs 11-17 and exhibits 1-5.

WHEREFORE, Intervenor pray for judgment against the Defendants/Counterclaimants, and each of them, as follows:

- A. For compensatory damages in such amount as the court or jury may determine at the time of trial, but not less than the amounts of their promissory notes, plus their accrued interest;
- B. To reform the promissory notes to state "Shangri-La Trust 1999", in place and stead of "Shangri-La Trust 2002";
- C. For consequential damages in such an amount as the Court or jury may determine at the time of trial, but not less than this Court's minimum jurisdictional requirement;
- D. For general damages in such an amount as the Court or jury may determine at the time of trial, but not less than this Court's minimum jurisdictional requirement;
- E. For such equitable relief pled, as applicable;
- F. For Intervenor's costs and attorneys' fees incurred herein pursuant to A.R.S. §§ 12-341 and 12-341.01(A); and,
- G. For any such further relief the Court or jury finds just and proper.

DATED this 2nd day of October, 2013.

BAKER & BAKER

By /s/ Thomas M. Baker
Thomas M. Baker
Attorney for Intervenor

1 Copies of the foregoing e-mailed and
2 mailed this 1st day of October, 2013 to:

3 Chandler W. Travis
4 Melissa S. Lavonier
5 mlavonier@travislawaz.com
6 Travis Law Firm PLC
10621 S. 51st Street, Ste 103
Phoenix, Arizona 85044
Attorneys for Defendants/Counterclaimants

7 Mr. Phillip Kenner
8 c/o Nathaniel H. Wadsworth
9 wadsworth@azlegal.com
Rowley Chapman & Barney, Ltd.
63 E. Main St., Ste. 501
Mesa, AZ 85201-7423

10 Mr. Phillip Kenner
11 c/o Ronald N. Richards, Esq.
12 ron@ronaldrichards.com
13 Law Offices of Ronald Richards & Associates, A.P.C.
PO Box 11480
Beverly Hills, CA 90213
Attorney for Plaintiff/Counterdefendant

14 /s/ Thomas M. Baker
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EXHIBIT 1

PROMISSORY NOTE
\$100,000.00 (US)

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Tyson and Kathy Nesti (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note.

(a) Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be pre-paid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of the agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

(b) Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

(c) Debtors' Collateral. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principal and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

(d) Default. Each of the following events shall constitute default hereunder: (1) Failure to pay when due; (2) Assignment of this note to Maker's creditors; (3) Filing of bankruptcy against the Maker; (4) Insolvency of Maker.

(e) Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

(f) Acknowledgment. Facsimile signatures are binding on both parties.

(g) Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before September 8, 2008.


John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 2

PROMISSORY NOTE

\$100,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Darryl Sydor (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note

[a] **Due & Payable.** The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principal to remain outstanding until due per the terms of the agreement.

[b] **Choice of Law.** This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] **Debtors' Collateral.** This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principal and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

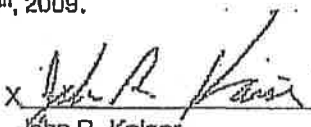
[d] **Default.** Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] **Cure.** Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] **Facsimile.** Facsimile signatures are binding on both parties.

[g] **Modifications.** Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before October 5th, 2009.

X 

John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 3

11/18/2009 17:41 FAX

001/001

PROMISSORY NOTE
\$50,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shengri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of Jere Lahinen (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$50,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note.

[a] **Due & Payable.** The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] **Choice of Law.** This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] **Debtors' Collateral Assignment.** This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.


[d] **Default.** Each of the following events shall constitute default hereunder; [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] **Cure.** Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] **Facsimile.** Facsimile signatures are binding on both parties.

[g] **Modifications.** Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before November 18, 2009.



John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 4

NOTE

ALLIE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), pay to the order of Dimitri Khristich (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ, at an annual rate of 10%, paid in full per the terms of the note.

Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full at the time of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in full at any time without penalty or premium. Any partial payments shall be made first towards any fees costs, then towards principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed under the laws of the State of Arizona.

Debtors' Collateral. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principal and interest due on the loan will be payable immediately following the repayment of the first loan on the security due to the bank.

Default. Each of the following events shall constitute default hereunder: (1) Failure to pay when due; (2) Failure to pay this note to Makers' creditors; (3) Filing of bankruptcy against the Maker; (4) Insolvency of Maker.

Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

Facsimile. Facsimile signatures are binding on both parties.

Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before April 1, 2013.

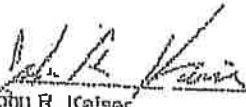
X 
John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ

EXHIBIT 5

May 12 10 01:34p

P.1

PROMISSORY NOTE
\$100,000.00 [US]

FOR VALUE RECEIVED, the undersigned, John R. Kaiser, Shangri-La Trust 2002, (hereinafter referred to as "Maker"), promises to pay to the order of William Ranford (hereinafter referred to as "Payee"), located at _____, or at such other place as the Payee may from time to time designate in writing, the principal sum of \$100,000.00 within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. Interest will be paid at an annual rate of 15% paid in full per the terms of the note.

[a] Due & Payable. The entire outstanding principal balance of this Note shall be due and payable in full within 7 days of the sale of the house located at 8224 North Golf Drive, Paradise Valley, AZ. This Note may be prepaid in whole or in part at any time without penalty or premium. Any partial payments shall be made first towards any fees, costs, then interest, then principal due. In the event the period of the loan extends through the annual date of this agreement, interest will be paid for the first year with principle to remain outstanding until due per the terms of the agreement.

[b] Choice of Law. This Note and the instruments securing it are to be governed, interpreted and construed by, through and under the laws of the State of Arizona.

[c] Debtors' Collateral Assignment. This Note is secured by 8224 North Golf Drive, Paradise Valley, AZ, as described. The principle and interest due on the loan will be payable immediately following the repayment of the first loan on the property due to the mortgage bank.

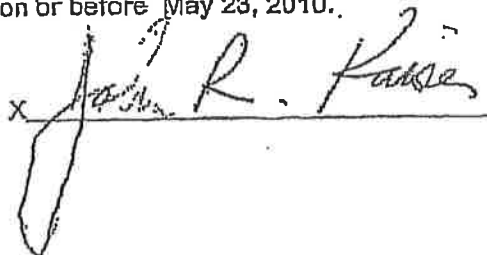
[d] Default. Each of the following events shall constitute default hereunder: [1] Failure to pay when due; [2] assignment of this note to Makers' creditors; [3] Filing of bankruptcy against the Maker; [4] Insolvency of Maker.

[e] Cure. Upon notice from Payee, Maker shall have 15 days to cure any defaults.

[f] Facsimile. Facsimile signatures are binding on both parties.

[g] Modifications. Any modification to the terms hereunder shall be evidenced in a writing signed by both parties.

IN WITNESS WHEREOF, the undersigned has caused this Note to be executed in its name on or before May 23, 2010.

x 

May 12 10 01:34p

p.2

John R. Kaiser
8224 North Golf Drive
Paradise Valley, AZ